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No. 80-1762

# In the Supreme Court of the United States

OCTOBER TERM, 1980

RONALD F. MANALE, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

1. Whether the evidence presented at petitioner's trial was sufficient to support his conviction.

2. Whether the nine month delay between petitioner's arraignment and trial violated the Speedy Trial Act or denied him a speedy trial under the Sixth Amendment.

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

## OPINION BELOW

The court of appeals affirmed petitioner's conviction without opinion. The unpublished order of affirmance is reproduced at Pet. App. A1-A2.

## JURISDICTION

The judgment of the court of appeals was entered on January 19, 1981. A petition for rehearing was denied February 17, 1981. The petition for a writ of certiorari was filed on April 21, 1981.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner and six co-defendants were convicted of conspiracy to possess cocaine with intent to distribute, in violation of 21 U.S.C. 846, and

[1] It appears that the petition was filed out of time.

of committing the substantive offense, in violation of 21 U.S.C. 841(a)(1). Petitioner was sentenced to two years' imprisonment and a three-year special parole term. The court of appeals affirmed without opinion.

The evidence at trial showed that, on several occasions in October 1977, petitioner spoke by telephone with Christine Wedbush, who informed him that she had "lady" (cocaine) and would fly from Florida to join him in New York (8/2/79 Tr. 186).[2] On October 17, petitioner met Wedbush and her friend, Sherry Bailey, at the airport (*id.* at 188). En route to petitioner's apartment, Wedbush showed him the cocaine and stated that she was trying to sell it (*id.* at 190). Petitioner replied that he had not expected such a large amount and "wasn't sure he could get rid of it" (*ibid.*).

At the apartment, petitioner told Bailey that he wished to have the cocaine tested (8/2/79 Tr. 193-194). Petitioner also observed that "he hadn't been dealing in a long time and it would take awhile to get his connections back for that bunch of coke." After making a few telephone calls, petitioner took approximately half a gram of cocaine and, along with his roommate, left the apartment to have the substance tested (*ibid.*). When they returned, petitioner informed Wedbush and Bailey that the cocaine, not being of a high quality, would take a week to sell and that the price was "ridiculous" (*id.* at 196).

In petitioner's presence, Wedbush called a buyer (James DiStefano) in Detroit and told him that she had a "very heavy lady" for him. DiStefano agreed to meet her at the airport in Detroit to purchase the cocaine (8/2/79 Tr. 197). Wedbush then explained to petitioner that she would take the cocaine to DiStefano (8/7/79 Tr. 94-95). They agreed to continue discussing a possible cocaine transaction after she

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[2] "Tr." refers to the transcript of petitioner's trial.

returned from Detroit (*id.* at 94). Petitioner then drove Wedbush and Bailey to the airport (8/2/79 Tr. 198).

## ARGUMENT

This case presents no question warranting review by this Court. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioner asserts (Pet. 5-8) that the evidence was insufficient to support his conviction. The evidence in this case was clearly sufficient to support the jury's conclusion that petitioner had conspired to possess, and did possess, cocaine with the intent to distribute it.

Wedbush told petitioner on the telephone that she had "lady" (cocaine) to bring him, and petitioner called her to confirm their plans (8/2/79 Tr. 186). They met at petitioner's apartment, where petitioner made telephone calls to sell the cocaine (*id.* at 188-193). Petitioner then left the apartment with approximately one-half gram of cocaine and had the substance tested. Upon returning, he informed Wedbush that he could not distribute the cocaine because it was very expensive, not of high quality, and had to be sold too quickly. He agreed, however, to continue discussing a future transaction when she returned from Detroit. Finally, petitioner drove Wedbush to the airport, knowing that she travelled to effect a cocaine transaction with DiStefano. Accordingly, there was sufficient evidence from which a jury could conclude that petitioner conspired to possess, and had possessed, cocaine with the intent to distribute.

2. Petitioner contends (Pet. 9-14) that delay between his arraignment on October 16, 1978, and his trial which commenced July 23, 1979, violated the Speedy Trial Act, 18 U.S.C. (& Supp. III) 3161 *et seq.*, and also violated his

constitutional right to a speedy trial under the Sixth Amendment.[3] These claims were properly rejected by the courts below.

a. Petitioner's statutory claim rests upon his assertion (Pet. 11-14) that the district court's order of June 28, 1979, entered pursuant to 18 U.S.C. 3161(h)(8), excluding the period between February 20, 1979, and July 5, 1979, from speedy trial computations "was not made in good faith, nor in the spirit of Congress' intent in enacting the Law" (Pet. 13). The order was predicated on the finding that the complexity of the multi-defendant case was such that deferral of the trial to allow for full preparation served the ends of justice. Petitioner's claim is based on the unsupported speculation that the district court's motivation for authorizing this exclusion was general calendar congestion, an impermissible ground for exclusion, see 18 U.S.C. 3161(h)(8)(C), rather than the ground stated by the district court, which is a valid one under the Speedy Trial Act, 18 U.S.C. 3161(h)(8)(A), (B)(ii).[4] Petitioner's contention (Pet. 13) that

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[3]Between his arraignment on October 16, 1978, and November 20, 1978, petitioner requested and received a number of continuances from the district court (Pet. 3). On December 22, 1978, he moved the court for a dismissal of the indictment, but the court denied this motion on January 31, 1979 (Pet. 3-4). Subsequently, the trial court granted the government's requests for continuances on several occasions and scheduled the trial for May 22, 1979 (Pet. 4). The court then rescheduled the trial to July 5 (Pet. 4), but petitioner requested a continuance until July 10 (Pet. 4). On July 9, 1979, petitioner moved for dismissal, alleging a violation of his rights under the Speedy Trial Act. The trial began on July 23, 1979 (*id.* at 4-5).

[4]Petitioner's contention (Pet. 9) that the district court's denial of his motion for severance subjected him to delays resulting from preparation by court and counsel for a complex multi-defendant trial belies his contention that the exclusion order did not rest on the grounds stated by the court.

Petitioner's contention that failure to grant a separate trial was error is itself unfounded. As petitioner acknowledges (Pet. 9), defendants jointly indicted should generally be tried together, particularly where

indictment upon a defendant's motion when the prescribed time limit has not been met. However, as enacted in 1975, this sanction was not to "become effective" until after July 1, 1979. 18 U.S.C. 3163(c)(3). Convinced that the federal courts were not uniformly prepared to implement the Act fully by that date, Congress further postponed the effective date of the sanctions in amendments to the Speedy Trial Act enacted August 2, 1979, providing that the dismissal sanction "shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed on or after July 1, 1980." 18 U.S.C. (Supp. III) 3163(c). See H.R. Rep. No. 96-390, 96th Cong., 1st Sess. 8-9, 12 (1979); S. Rep. No. 96-212, 96th Cong., 1st Sess. 30-31, 35 (1979).

Petitioner argues (Pet. 10) that because his trial began after July 1, 1979, and before August 2, 1979, the district court was obliged to grant his motion for dismissal of the indictment. See note 3, *supra*. Contrary to petitioner's assumption, this case does not present the question whether the 1979 Speedy Trial Act amendments were applicable "retroactively" to prevent giving effect to the dismissal sanctions in the interval between July 1, 1979, and August 2, 1979. Cf. *United States* v. *Fielding*, 630 F. 2d 1357 (9th Cir. 1980). Rather, as the court of appeals evidently concluded, the Speedy Trial Act, as initially enacted, provided that the dismissal sanction was effective only with respect to cases filed on or after July 1, 1979. See *United States* v. *Coffman*, 638 F. 2d 192, 193 (10th Cir. 1980); *United States* v. *Carreon*, 626 F. 2d 528, 532 n.5 (7th Cir. 1980); *United States* v. *Vanella*, 619 F. 2d 384, 386 (5th Cir. 1980), *United States* v. *Barboza*, 612 F. 2d 999, 1000 (5th Cir. 1980). As petitioner was arraigned on October 16, 1978, the dismissal

sanction of the Speedy Trial Act could in no event be applied in his case.[5]

Finally, even if the courts of appeals that have uniformly reached this conclusion are all in error, only a limited number of cases are affected, and the question is of no continuing importance.

b. Petitioner also contends (Pet. 14-16) that he was denied his Sixth Amendment right to a speedy trial. Under the test established in *Barker* v. *Wingo*, 407 U.S. 514 (1972), petitioner's claim is unsound. In *Barker*, the Court held that speedy trial claims must be determined on a case by case basis, considering the length of delay, the reason for the delay, whether the accused timely asserted his right to a speedy trial, and whether there was any prejudice from the delay. *Id.* at 530-533. Here, the length of the delay from arraignment to trial—approximately nine months—is hardly unconscionable, particularly in view of petitioner's own

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[5]By the 1979 amendments Congress made explicit its intention that the dismissal sanction be applied only to cases filed on or after the effective date. 18 U.S.C. (Supp. III) 3163(c). The legislative history of the amendments reveals that Congress intended to work no change in this respect, but only to "specify" with greater precision its original intent. H.R. Rep. No. 96-390, *supra*, at 12; see also S. Rep. No. 96-212, *supra*, at 35. The legislative history of the 1979 amendments also reflects Congress' understanding that under the Act as it stood prior to amendment, the dismissal sanction applied only to cases subject to the "permanent" 60 day limit on time elapsed between arraignment and trial—*i.e.* those commenced after July 1, 1979—rather than any of the interim limits which took effect earlier, such as the 80-day period applicable to this case (see 18 U.S.C. 3161(c) and (g); 18 U.S.C. 3163(b)). H.R. Rep. No. 96-390, *supra*, at 3, 8).

Given Congress' understanding of the effective date of the sanctions under the Speedy Trial Act prior to the 1979 amendments, there was no reason for Congress to address itself to the illusory problem, posited by petitioner, of "retroactive" application of the deferral of sanctions. Adoption of petitioner's interpretation of the Speedy Trial Act and the 1979 amendments, on the other hand, would lead to the peculiar conclusion that the deferral of his trial was impermissible, but would have been proper if it had been extended until August 3, 1979.

motions for continuance, which resulted in more than three months of delay.[6] In addition, petitioner does not contend that the reason for the delay was a "deliberate attempt to delay the trial in order to hamper the defense [and therefore that] should be weighed heavily against the government." *Barker* v. *Wingo, supra*, 407 U.S. at 531. Instead, he speculates that "[t]he actual reasons for the adjournment were either because the Government wasn't prepared and/or other protracted proceedings pending before the Court" (Pet. 15). Finally, petitioner's contention (Pet. 16) that his defense was impaired because he was not able to find and present as a witness an unnamed "third party," has no support in the record and is entirely speculative. Moreover, by petitioner's own acount (Pet. 15-16), the "disappearance" of the third party appears to be rooted in petitioner's relocation from New York to Texas approximately a year before his indictment, rather than in the time elapsed between his arraignment and trial. Accordingly, petitioner has demonstrated no prejudice flowing from the relatively brief delay in commencement of his trial.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[6]See note 3, *supra*.

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